

Franchise Tax Board**ANALYSIS OF ORIGINAL BILL**

Author:	<u>AR&T Committee</u>	Analyst:	<u>William Koch</u>	Bill Number:	<u>AB 1546</u>
Related Bills:	<u>See Legislative History</u>	Telephone:	<u>845-4372</u>	Introduced Date:	<u>March 5, 2009</u>
		Attorney:	<u>Patrick Kusiak</u>	Sponsor:	<u>Franchise Tax Board</u>

SUBJECT: Limited Partnership Revival-Account Fees, Tax Returns, And Expedited Service Fees

SUMMARY

This bill would require a canceled domestic limited partnership (LP) to pay outstanding fees, file missing tax returns, and pay a service fee for expedited revival requests, in addition to the current requirements to revive.

PURPOSE OF THE BILL

The purpose of this Franchise Tax Board (FTB) sponsored bill is to maintain equitable treatment among taxpayers by aligning the requirements for a domestic LP to revive with the requirements for a corporation to revive.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2010, and specifically operative with respect to written confirmations provided by FTB on or after that date.

POSITION

Support.

On December 4, 2008, the FTB voted 2-0, with the Department of Finance abstaining, to sponsor the language included in this bill.

SUMMARY OF SUGGESTED AMENDMENTS

Amendments 1 and 2 are provided to correct technical errors.

ANALYSISSTATE LAW

Under existing state law, the provisions of the Uniform Limited Partnership Act (ULPA) of 2008 are mandatory for a domestic LP formed on or after January 1, 2008, and are elective for a domestic LP formed before January 1, 2008. The ULPA of 2008 will govern all domestic limited partnerships, regardless of when they were formed, on and after January 1, 2010.

Board Position:

<u> X </u> S	<u> </u> NA	<u> </u> NP
<u> </u> SA	<u> </u> O	<u> </u> NAR
<u> </u> N	<u> </u> OUA	<u> </u> PENDING

Department Director

Date

Lynette Iwafuchi for
Selvi Stanislaus

04/23/09

A domestic LP subject to the ULPA of 2008 must file a certificate of cancellation with the Secretary of State to complete the dissolution process. A domestic LP that has filed a certificate of cancellation may file a certificate of revival with the Secretary of State to revive to active status. Upon filing the certificate of revival, the domestic LP is treated as if it had not been canceled, which includes the validation of all contracts. The certificate of revival must be accompanied by certification from FTB that the domestic LP has paid all of the annual tax, penalties, and interest due, including those amounts for each year between cancellation and revival. A requirement that the domestic LP pay any fees due, such as the collection cost recovery fee, and file any required tax returns prior to certification from FTB is absent under current law.

Additionally, present law lacks provisions for FTB to charge a service fee in instances where a domestic LP requests expedited processing of its request for the certification letter needed to file the certificate of revival.

Under current state law, FTB may suspend a corporation's powers, rights and privileges for non-payment and non-filing of tax returns. Corporations suspended by FTB may revive by filing an Application for Certificate of Revivor, filing all delinquent tax returns, and paying any balance due, which includes taxes, penalties, interest, and fees.

Corporations that request expedited processing of their revivor request must pay a service fee, currently \$100.

THIS BILL

This bill would:

1. Require a domestic LP to pay any fees due and file any required tax returns to receive the certification letter from FTB needed for the domestic LP to revive.
2. Require payment of a service fee if a domestic LP requests expedited processing of their certification letter request. The service fee would be \$100 until January 1, 2011. Thereafter, the expedited service fee amount would be established by regulation.
3. Apply to written confirmation requests made by FTB on or after January 1, 2010.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department's programs or operations.

TECHNICAL CONSIDERATIONS

On page 2 line 17, strike out "thereof" and insert "theron"

On page 4, line 33, strike out "matter" and insert "manner".

Amendments 1 and 2 are provided to correct these errors.

LEGISLATIVE HISTORY

AB 339 (Harman, Stats. 2006, Ch. 495) enacted the Uniform Limited Partnership Act of 2008, applicable to domestic LPs formed on or after January 1, 2008, and all domestic LPs on and after January 1, 2010, regardless of when formed.

AB 583 (Sher, Stats. 1996, Ch. 1003) enacted the Uniform Partnership Act of 1994, applicable to partnerships formed on or after January 1, 1997.

OTHER STATES' INFORMATION

Review of *Illinois, Massachusetts, Michigan, Minnesota, and New York* laws found no comparable revival process for cancelled limited partnerships. These states were reviewed because of the similarities between California income tax laws and their tax laws.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

Based on data and assumptions discussed below, the revenue gain from this bill would be as follows:

Estimated Revenue Impact of AB 1546 Effective On Or After January 1, 2010 Enactment Assumed After June 30, 2009			
Limited Partnership	2009-10	2010-11	2011-12
Revival	+\$1,000	+\$1,000	+\$1,000

This estimate does not consider the possible changes in employment, personal income, or gross state product that could result from this bill.

Revenue Discussion:

The revenue impact of this bill is depends on the number of canceled domestic LPs that revive and would pay the proposed additional fee for expedited processing of the certification letter request.

Data from the Secretary of State's office indicates that approximately 240 LPs cancelled their registration in fiscal year 2007-2008. Assuming that 5 percent of the canceled domestic LPs would revive and that additional expedited processing fees are \$100 per domestic LP, the expedited processing fee revenue would be \$1,200 annually (240 cancelled LPs X 5% revival rate X \$100).

The requirement for an LP to pay any outstanding fees prior to revival would have minimal impact on the revenue estimate because the number of cancelled LPs that would revive with outstanding fees is estimated to be low.

Additionally, the requirement for an LP to file any required tax return prior to revival would have minimal impact on the revenue estimate because current law requires a cancelled LP to pay any annual tax due prior to revival.

The \$1,200 in additional expedited processing fees was split between fiscal years resulting in the first six months of 2010 impact of \$625 in fiscal year 2009-10. Fiscal years impacts for 2010-11 and 2011-12 were \$1,200, rounded to \$1,000.

LEGISLATIVE STAFF CONTACT

Legislative Analyst
William Koch
(916) 845-4372
william.koch@ftb.ca.gov

Revenue Director
Jay Chamberlain
(916) 845-3375
jay.chamberlain@ftb.ca.gov

Legislative Director
Brian Putler
(916) 845-6333
brian.putler@ftb.ca.gov

Analyst	William Koch
Telephone #	845-4372
Attorney	Patrick Kusiak

FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 1546
As Introduced March 5, 2009

AMENDMENT 1

On page 2, line 17, strike out "thereof" and insert:
thereon

AMENDMENT 2

On page 4, line 33, strike out "matter" and insert:
manner